In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 952

JOHN P. SPOMAR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial by the United States District Court for the Northern District of Illinois (a jury having been waived), petitioner was convicted under Section 7201 of the Internal Revenue Code of 1954 for wilfully attempting to evade his taxes for the years 1958, 1959 and 1960. He was fined $5,000, and sentenced to two years in prison, the prison sentence to be suspended after service of 60 days. The Court of Appeals affirmed (339 F. 2d 941; Pet. App. 1-5).

Petitioner seeks certiorari on the ground that his constitutional rights were violated by the district court's denial of his pre-trial motion to suppress certain evidence obtained from him by special agents of the Internal Revenue Service.

The agents in question went to petitioner's place of business, identified themselves, made known that they were investigating his income taxes and asked if he would produce his records (Pet. App. 4). As the court of appeals noted (*ibid.*), there was no deceit or misrepresentation and petitioner voluntarily complied with the request. The claim is made that the information gained should nonetheless have been suppressed because the agents did not advise petitioner of his Fifth Amendment privilege and of his right to consult with counsel. However, in circumstances of the kind disclosed here, the law requires only that the information or access be freely given. *Wilson* v. *United States*, 162 U.S. 613, 621-624; *Powers* v. *United States*, 223 U.S. 303, 312-314; *Scanlon* v. *United States*, 223 F. 2d 382, 385 (C.A. 1); *Greene* v. *United States*, 296 F. 2d 841, 843 (C.A. 2), vacated and remanded on other grounds, 369 U.S. 403; *United States* v. *Sclafani*, 265 F. 2d 408, 414-415 (C.A. 2), certiorari denied, 360 U.S. 918; *United States* v. *Burdick*, 214 F. 2d 768 (C.A. 3), vacated and remanded, 348 U.S. 905, affirmed on remand, 221 F. 2d 932, certiorari denied, 350 U.S. 831; *Turner* v. *United States*, 222 F. 2d 926, 931-932 (C.A. 4), certiorari denied, 350 U.S. 831; *Montgomery* v. *United States*, 203 F. 2d 887, 893 (C.A. 5); *United States* v. *Achilli*, 234 F. 2d 797, 805 (C.A. 7), affirmed on other issues,

353 U.S. 373; *Hanson* v. *United States*, 186 F. 2d 61, 64-66 (C.A. 8).

Contrary to petitioner's suggestion, *Escobedo* v. *Illinois*, 378 U.S. 478, has no application. In *Escobedo*, the Court, while holding that the Sixth Amendment was violated by the refusal of the police to honor the defendant's request to consult with his lawyer during the course of an interrogation, carefully limited its holding to the particular facts of the case, as follows (pp. 490-491):

> "* * * where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment * * *"

Here, the petitioner was not taken into custody; he was not interrogated in the unfamiliar and threatening surroundings of a police station; he was not denied the opportunity to consult with friends or counsel.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

MARCH, 1965.